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TOWN ATTORNEY REPORT

DATE: December 27, 2001

FROM: Monroe D. Kiar

RE: Litigation Update 

1. **Sunrise Water Acquisition Negotiations:** The Town requested competitive proposals for providing engineering services to conduct a western area utilities study. The Bid Selection Committee met on September 12, 2001 and ranked URS as its first choice. At the Town Council Meeting of October 3, 2001, a resolution was approved selecting URS to provide engineering services for the western area utilities study and authorizing the Town Administrator to negotiate an agreement with URS for such services.
2. **Ordonez, et al v. Town of Davie:** This matter went to trial and the jury returned a zero verdict for the Plaintiffs. The plaintiffs failed to file a timely Notice of Appeal and therefore, the jury verdict is now final. Mr. Burke has moved to tax court costs against the Plaintiffs. His motion remains pending.
3. **Coastal Carting Ltd., Inc. v. City of Sunrise, et al:** The United States District Judge dismissed this action as to the Plaintiff, Coastal Carting Ltd. and as to the various municipal defendants, including Davie. Other garbage companies have since been allowed to intervene in this lawsuit and the case is proceeding as to those new garbage companies. Despite repeated requests from the Town of Davie to the County, the County has refused to provide the Town and the other municipalities with a General Release of any further liability, but rather, has responded by stating that the cities should be brought back into the lawsuit as defendants. The new garbage companies however, have indicated to Mr. Johnson, our League of Cities Attorney, that this is not their desire at this time. Since it has been a number of months since the Town and the municipalities were dismissed by Judge Gonzalez, it is Mr. Johnson's recommendation that the Town Attorney's Office close its file on this matter at this time. Mr. Johnson has recommended that should the Town of Davie be brought back into the case at a later date by the Resource Recovery

Board of Broward County, then he will reopen his file on this matter and the Town Attorney's Office should do likewise. At this point however, the Town has been dismissed as a defendant and until further notice, this case file shall be closed.

4. **Seventy-Five East, Inc. and Griffin-Orange North, Inc. v. Town of Davie:** A final hearing was held before Judge Cocalis regarding the Plaintiffs' Petition for Writ of Certiorari and both sides are awaiting the court's decision. In the meantime, the County is in negotiations with the property owner to purchase the 60 acres of commercial property in question for use as a regional park. The Town Council at its meeting of October 3, 2001, made a recommendation to the County by a 3-2 vote that the County proceed with its negotiations regarding the possible purchase of this land for use as a regional park and further, with its recommendation, requested that the property owner be required as part of any such purchase, to dismiss the instant lawsuits with prejudice, and release the Town of Davie of any and all further liability or cause of action relevant to the two lawsuits. Mr. Burke, the attorney assigned to this case by the Florida League of Cities, has recently learned that Judge Cocalis is being transferred from the Civil Division to the Family Law Division of the Broward Circuit Court. As such, it is believed that a decision from the Judge on these two cases should be forthcoming in the very near future.
5. **MVP Properties, Inc.:** The United States District Judge granted the Town of Davie's Motion for Summary Judgment and entered a Final Summary Judgment in favor of the Town and against the Plaintiff, MVP Properties, Inc. MVP Properties, Inc. filed a Notice of Appeal and both sides have filed their Appellate Briefs. Mediation was ordered by the 11th Circuit Court of Appeals which was held on November 1, 2001, but a settlement of this dispute was not reached. Mr. Burke offered to waive the outstanding Cost Judgment if the Plaintiff Corporation would agree to withdraw its appeal. MVP Properties, Inc. rejected this proposal and it was unwilling to make a counter-proposal unless the Town of Davie expressed a willingness to pay the Plaintiff Corporation some amount of money. The mediation ended with an impasse. The Town Attorney's Office has recently been advised that oral argument before the United States Court of Appeals for the 11th Circuit is now scheduled for the morning of February 1, 2002, at the Federal Courthouse in Miami, Florida.
6. **Town of Davie v. Malka:** The Town Attorney's Office has been advised by the Building Department that the exterior of the home is complete. The exterior has been painted, all construction debris has been removed and the roof is complete. The completion of the exterior has been the principal goal of the Town Council, the Code Enforcement Division, the Town Attorney's Office and the Building Department, as well as the residents in the community. The owner will commence completion of the interior of the structure now that the exterior has been completed.
7. **City of Pompano Beach, et al v. Florida Department of Agriculture and Consumer Services:** The last rule promulgated by the Department of Agriculture was successfully challenged by Broward County and the coalition of cities before the Department of Administrative Hearings. The Department of Agriculture is appealing that ruling. In the

meantime, the Department of Agriculture has promulgated a new rule and the coalition of cities, including Davie, has filed a rule challenge to this new rule. The trial is now scheduled to be heard in the latter part of January, 2002. The coalition commenced discovery procedures and served written Interrogatories and a Request for Production of Documents upon the Department of Agriculture. The Department of Agriculture has failed to date, to produce the requested discovery and has filed a Motion seeking a Protective Order relieving it of its requirement to produce the documents needed by the coalition. The Department of Agriculture also filed a Motion to Disqualify the DOAH Judge alleging bias, which Motion to Disqualify was denied. Based upon the Department of Agriculture's failure to produce the discovery requested by the coalition, Broward County and the coalition of cities have moved for a continuance of the trial to the latter part of February. This motion is pending and as of the date of this Litigation Report, the Court has not yet ruled upon the Motion for Continuance. A decision is expected within the next few days.

8. **Christina MacKenzie Maranon v. Town of Davie:** The Town of Davie has filed a Motion for Summary Final Judgment on behalf of the Town of Davie and Police Officer Quentin Taylor seeking to dismiss both parties as defendants in this lawsuit. The Motion for Summary Judgment continues to remain pending. In the meantime, the Court has removed the case from the trial docket pending its ruling on our Motion for Summary Judgment. Therefore, even if our Motion for Summary Judgment is not granted, that this lawsuit will not be heard until next year, should it go to trial.
9. **Reinfeld v. Town of Davie, et al:** The parties have commenced discovery and the deposition of the Plaintiff was recently taken. Based upon the contents of that deposition, Mr. Burke, the League of Cities Attorney assigned to this case, has indicated to the Town Attorney's Office that the Town will be moving for the entry of a Summary Judgment in its favor and against the Plaintiff, Reinfeld. In the meantime, Mr. Marrero, the Florida League of Cities Attorney assigned to represent Defendant Weiner, has indicated that it is his expectation that his office will be moving for Summary Judgment on behalf of Mr. Weiner as well in the near future and he has expressed confidence that his Motion will be granted by the Court.
10. **Spur Road Property:** The Town Attorney has been in contact with Mr. Burke regarding this matter. Mr. Burke appeared in Tallahassee before the Division of Administrative Hearings arguing the Town's protest of the Department of Transportation's award of the property to the highest bidder. There has been no ruling on the hearing on the Town's formal protest of the actions of the Department of Transportation as of the date of this Litigation Report. Mr. Burke has indicated that both sides have been requested to prepare proposed Findings of Fact and proposed Rulings for submission to the Court
11. **Victoria Saldena v. Town of Davie:** The Town Attorney's Office has spoken with the League of Cities attorney assigned to represent the Town in this case, Mr. Bruce Johnson. Ms. Saldena is suing the Town of Davie and another defendant relevant to an automobile accident. Mr. Johnson has assured the Town Attorney's Office that there should be no exposure to the Town which exceeds its insurance coverage and that the maximum

exposure to the Town is its deductible.

12. Cummings v. Town of Davie: The Town Attorney's Office and the attorney for the Plaintiffs are at this time, jointly preparing a Final Judgment for submission to the Court pursuant to the terms of the Stipulation of Settlement which was filed with the Court at the July 23, 2001 hearing. Also, the Town Attorney's Office has prepared an appropriate Deed to be executed by Mr. and Mrs. Cummings transferring title to the property in question to the Town of Davie. The Plaintiffs' attorney has indicated that she will ask the Cummings to sign the Deed prepared by the Town Attorney. Also, the Town Attorney's Office has recently received a certified copy of the Approval of the Variance Request that was affirmatively voted upon by the Town Council. A copy of this will be provided to the Plaintiffs' attorney as well attached to the Final Judgment as an exhibit.